

NATURAL RESOURCES COMMISSION

Indiana Government Conference Center
Conference Room B
402 West Washington Street, Indianapolis
November 15, 2005

Minutes of November 15, 2005

MEMBERS PRESENT

Rick Cockrum, Vice Chairman
Kyle Hupfer, Secretary
Jane Ann Stautz
Matthew T. Klein
Damian Schmelz
Raymond McCormick, II
Bryan Poynter
Chad Frahm
Chris Kiefer
Richard Mangus

NATURAL RESOURCES COMMISSION STAFF PRESENT

Stephen Lucas
Jennifer Kane
Debbie Michaels

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

John Davis	Executive Office
Ron McAhron	Executive Office
Burgess Brown	Executive Office
Ric Edwards	Executive Office
Todd Tande	Executive Office
John Bacone	Nature Preserves
Glenn Salmon	Fish and Wildlife
Amanda Ricketts	Personnel
Cheryl Hampton	Personnel
John Baker	Budget
Arlene Phillips	Budget
Dale Gick	Engineering
Bob Waltz	Entomology
Ann Knotek	Legal
Jim AmRhein	Oil and Gas
Dan Barton	State Parks and Reservoirs
Jim Gerbracht	State Parks and Reservoirs
Ginger Murphy	State Parks and Reservoirs

Terri Price	Water
Jomary Baller	Water
Mark Basch	Water
Ken Smith	Water
Jim Hebenstreit	Water
Bruce Thompson	Water

GUESTS PRESENT

Sara Earles	Steve Poe	Chris Lowe
Wayne Crowl	Laura Steadham	Susan Miller
Ralph Holman	Deanna Oware	Roger Kottowski
Alex Intermill	Dan Brinkerhoff	Gary Doxtater
Alan Hux	Bob Howard	Reed Records
Tom Poynter	Pam Bennett	Scotty Estridge
Tracy Thornburgh	Patrick Bennett	Arlene Smoot
Mark Thornburg	Stacy Riggs	

Rick Cockrum, Vice Chairman, called to order the regular meeting of the Natural Resources Commission at 10:05 a.m., EST, on November 15, 2005, at the Indiana Government Conference Center, Conference Room B, 402 West Washington Street, Indianapolis, Indiana. With the presence of ten members, the Vice Chair observed a quorum.

Damian Schmelz moved to approve the minutes of September 20, 2005. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

Director Hupfer reported, “We had a great celebration last week with the Governor. We have closed on Goose Pond. That is something I can see the Commission has been involved with for some period of time. So, that was a big occasion for not only the DNR but for the Natural Resources Commission.”

John Davis provided the report of the Deputy Director for the Bureau of Lands and Cultural Resources. Davis reported on the recent fire at Pokagon State Park. He said the fire did not burn the nature preserve area, but did burn a few dozen trees within the park. “The wildfire was started, it looks like, by a neighbor.”

Davis reported that the Department dedicated Mossy Point Nature Preserve. “It was a great partnership day with the Central Indiana Land Trust down on Sugar Creek” with Eli Lilly representatives and local supporters in attendance.

Davis said deer reductions took place in the state parks on November 14 and November 15, and they will take place again November 28 and November 29. He reflected the noncommercial deer hunts seemed to be “going fairly well” although he did not have a total count on the reductions.

Ron McAhron, Deputy Director of Bureau of Resource Regulation, provided his report. He commended the Division of Water for a large reduction in the number of pending permits to a

“record low of 170.” McAhron said that the number of pending permits had been as high as 800. “They have done a fantastic job”.

McAhron reported that the Division of Reclamation had recently completed a teacher seminar at Rose Hulman Institute. The seminar included explanation of mineral extraction and the rule adoption processes and was attended by teachers from across the state. McAhron announced that the 19th Annual Society of Mining and Reclamation meeting is scheduled for December 5, 2005 in Jasper, Indiana. On December 6th there would be approximately 125 to 150 people receiving continued education credits while learning more about modern technology.

Consideration of Recommendation of Approval of Department of Natural Resources Fee Restructuring Establishing Fee Ranges for the Director’s Discretion.

Director Hupfer presented this item. He said the DNR had been working for the past several months on fee restructuring. “We have an aggressive revenue projection for this year in order for us to meet budget, both for this year and next year. Right now, it appears there will be a short fall of revenue, especially on the parks side of the equation.” He said that it is the Department’s “obligation from a legislative mandate and history of the state parks to operate at a break-even point. We are a user fee state, meaning that user fees are expected to pay the bills for the operations, as opposed to a general fund state, where in some other states every taxpayer shares the burden.” He said that the Legislature has delegated to the Commission the authority to set fees, which has historically been done in a “very rigid manner.” Hupfer indicated that the Department “desires some flexibility on user fees by developing a demand-based model whereby higher fees could be charged during peak times of the year.”

Damian Schmelz, Commission member, reflected, “Over the years, I’ve argued that state parks, particularly, should be as available as possible to those Indiana citizens who can least afford to go to big city parks, or to Disney, or to wherever. The same for the cabins, the same for the camp sites. I am not favorable for the peak season elevation prices. The people I grew up with seem to me to have as much right to go on the 4th of July weekend to a park without running into an increased gate fee or without running into a increased camping fee. Or if they’re lucky enough to get into a cabin or a lodge that they’re going to be hit particular hard.” Schmelz indicated that a fee range “makes sense” with fees established at the discretion of the Director. “I’m all right with that, but I’m worried about the mind-set that we’re going to base the fees seasonably on what the market will bear. I don’t think we’ve had that reputation yet, and I wouldn’t like us to get that reputation. It’s only been a few years since we set a difference between resident and non-resident, and I’m all right with that.” Schmelz expressed that the boating and docking fees could be priced accordingly and separate from the other fees.

Vice Chair Rick Cockrum stated that in the past the Commission has attempted to achieve “appropriate balance” with respect to user fees and the state general fund. “The flip side of the argument is should the taxpayer that doesn’t use the facility be subsidizing people’s recreation? And that’s always the challenge, finding the balance between the taxpayer and the user so that it’s appropriate. Because, I think you’re absolutely on target. We don’t want to exclude people from having affordable recreation.” He noted that the Department “needs to find a balance” and be given flexibility with respect to seasonal fees but also to each property’s usage volume.

Bryan Poynter asked if the Department had the technology to be flexible and to communicate that efficiently to the public. He asked whether the Department could track data to assess achievement of its goal.

The Director replied, "We will obviously be measuring revenue on a weekly or monthly basis. It's very seasonal. It's very temperamental depending on weather. We're going to communicate this by putting ranges out."

Poynter asked if the Department's web-site would provide the price of a particular campsite. Hupfer indicated the fees would be posted on the DNR's web-site. Poynter added, "I'm not opposed to giving discretion to the Department to manage appropriately, but on the other hand I want to make sure of the value. If I'm willing to pay 'X' that the proportional value is going to go up. How are we going to communicate to the consumer what these increased revenues are going to be used for?"

The Director replied, "I've got to be honest with you. I don't know that you're going to see that much improvement, but you're at least not going to see a decline. And, that's what we're really fighting against. We're not going to have a lot more amenities for this, but we're at least going to be able to mow and keep trails in a state of repair, rather having to close trails and close facilities."

Poynter said, "The fundamental concept is one that I would not argue at all. I believe that it is the right thing to do. How does the Department work with State Parks and Recreation in particular?" Director Hupfer responded, "They have a proposal ready for me to look at. If this is approved today, I'm going to set the annual pass rate probably as soon as this meeting is over because I think there are people here today that want to buy them as Christmas gifts."

Vice Chair Cockrum commented that it was "pretty clear" that the Department user fees "do not come close" to private sector fees. "Usage is what's driving this, not to be competitive. We're not in the business to be competitive. We're in the business to provide access to a resource."

Jane Ann Stautz asked for clarification of special event permits and fees associated with those events. Director Hupfer explained that special event fees such as bike races or a run are "over and above" shelter house rental fees, and they are set at the discretion of the Department. "We're having more and more for-profit events on the parks and reservoir properties. Fishing tournaments are a prime example where promoters are walking away with a significant amount of money then we think we should be charging for that. But, if it's a charitable walkathon, we have the discretion to just allow them to do it."

Vice Chair Cockrum introduced Honorable Richard Mangus, newly appointed to the Commission. Cockrum said, "Dick has been a Legislator for many years and chaired the Natural Resources Committee, the Indiana General Assembly, the House of Representatives. We are glad to have you here, and to see you raised for appointment."

Richard Mangus noted his concern with the increase of the "every day pass." He said he did not want to see the "privilege of enjoying the park and usage of the picnic tables taken away from the lower income families."

Ray McCormick sought clarification on the annual horse tag. He questioned how the rider would be matched up with the horse. “How do we match tag ‘A’ with horse ‘A’?” McCormick indicated that he would withhold further comment on the issue until public comments were heard.

Stacy Riggs, President of the Indiana Trail Riders Association addressed the Commission. She said, “We understand that the DNR needs new schedules and fees so that they can be flexible and actually keep our parks and trails open. Our biggest concern would probably be that there’s no limitations associated with that implementation. The range is as wide as it is long.” She commented that the current DNR staff was “great to work with” but had concern with staff changes in the future. “As far as the Annual Horse Tag, those have been set up so that however many horses you got in the park, that’s how many horse tags you have to have. That annual horse tag on a family gets pretty expensive if they only go out and ride in the parks once a year.” She requested that a “daily horse tag” be reinstated. Riggs said the Association “believes that other users such as bikers and hikers should also pay user fees. Everybody has an impact on those trails, so to keep those trails up, that’s what we think that money should go toward.” Riggs added that the Association desired to see upgrades in some of the parks’ electricity standards.

Director Hupfer confirmed that the Department’s proposal would reinstate the daily horse tag. McCormick questioned Riggs on the amount of horse riders on the trails on a “typical day.” Riggs said usage volume was dependent on the park. She said Brown County State Park would be “packed” on a “nice weekend”, but “on a hot weekend during the middle of the summer, the parks might be only half full.” She added, “If you go to Owen-Putnam State Forest, you might have ten or twelve people in the whole forest. So, it’s very variable.”

Jane Ann Stautz asked Riggs, “In your experience with neighboring states, do they differentiate between resident and nonresident for horse tags?” Riggs responded, “Not for horse tags, no ma’am. A lot of what we’re proposing is the other services, for the camping.”

Vice Chair Cockrum asked Riggs, “So on the hypothetical weekend, as far as Brown County, what’s the percentage of out of state plates at the horse camp?” Riggs replied, “Probably 50% or more. You can ride through Brown County State Park and it will be full of Ohio tags. One of the reasons why the Association wanted to keep the daily tags was to keep money flowing into Indiana by out of state visitors.” McCormick inquired as to what percentage of horses on the trails are shod. Riggs relayed that “at least 90%” of the horses on the trails are shod.

Arlene Smoot of the Indiana Horse Council addressed the Commission. She said the views of the Indiana Horse Council were “just about the same” as the Indiana Trail Riders Association. “We’re concerned that perhaps after this administration, a Department head would come in that might not be as concerned for the welfare of the people in this fee rate change. Also, if they are too high, the average citizen won’t be able to come.” She reiterated that the Council’s main concern was for the average family’s ability to enjoy the parks system.

Sara Earles, Secretary of the Hoosier Back Country Horsemen, addressed the Commission. Earles said that HBCH agrees with “much of the proposal. We follow and accept the precepts of Colonel Richard Lieber. We also believe in user fees, because it puts the money back into the resource, and we understand DNR has to have a budget that meets their resource needs.” Earles expressed concern for the “common person” being able meet the expense to use the facility. She

inquired as to the total fees DNR collected in 2004, the expenditures, and any shortfalls. Earles asked, "Is there anywhere we can get this information? If there is we'd like to see these facts and figures."

Director Hupfer replied, "Anything in the past, obviously, we know where that went. It all went right back into the parks or the reservoir properties." Hupfer said that the user fees flexibility would allow DNR to adjust revenue. The Division of State Parks and Reservoirs would have daily reports to track gain or intake and daily camping reservations. "We'll be able to roll up fairly quickly what the results are. Again, this is uncharted territory, and I want to emphasize that this is not a fee increase. The Department feels they will generate as much revenue from lowering some fees as from increased fees. We think that by decreasing AA camp sites in the middle of the week from \$27 to \$14, we have a chance to increase campgrounds that are being used."

Earles said she would be interested in seeing figures of funds generated by various user groups and where the funds were being used. Hupfer responded that those figures were available and would be provided. Hupfer added that all amenities are currently being subsidized. Earls requested, "Please consider that the DNR is not the only entity operating on a reduced budget, and maybe Indiana's equestrians face the same situation and the increased increase may force them to curtail their visits to state parks and forests. It won't do you any good to raise your user fees if the campsites are empty because people cannot afford them."

Chairman Cockrum replied, "I think the last point is a very good point. It's not in anybody's best interest to price these beyond people's ability to use them. The accountability rests with this Commission. If the Commission approves this and decides to give the Department the discretion, we will be inclined and it will be our duty, I see, as monitoring that, getting reports back and tracking. I'm excited that technology is there to track the daily use and these types of activities. I think it's going to behoove all of us to pay attention to the utilization of those facilities and services and how they're fitting with the fee schedule."

Earles replied, "Well, we appreciate the fact that you're going to be monitoring that and we hope that the fees get the job done. We want to keep our state parks and forests open to all users. But, of course, my heart lies with equestrians, because that's what I am."

Poynter asked Director Hupfer if the DNR had the technology to look at individual property revenue. Hupfer said that the DNR is currently tracking the revenue of each property. He also noted that tracking the revenue had been done in the past and would be done to a "greater extent now and in the future."

Bryan Poynter moved to approve the user fee increases as amended (and set forth immediately following). Richard Mangus seconded the motion. Upon a voice vote, the motion carried. McCormick voted against the motion.

FEE	CURRENT FEE OR RANGE	PROPOSED FEE OR RANGE
Cabin	\$50-\$125	\$40-\$160
Shelters	\$30-\$50	\$15-\$100
AA	\$24-\$31	\$20-\$60
A	\$19-\$23	\$15-\$50
B	\$13-\$16	\$10-\$40
C	\$8-\$10	\$5-\$12
Annual Resident Park Pass	\$26	\$26-\$60
Annual Non-Resident Park Pass	\$30	\$30-\$80
Daily Resident	\$4	\$4-\$15
Daily Non-Resident	\$5	\$5-\$18
Walk-in	\$1	\$1-\$5
Swimming	\$3	\$1-\$5
25 Visit Swimming Pass	N/A	\$20-\$50
Annual Boat Lake Pass	N/A	\$20-\$40
Annual Non-motorized Lake pass	N/A	\$5-\$20
Daily Boat Lake Pass	N/A	\$5-\$25
Hourly Boat/Canoe Rental	\$5-\$8	\$3-\$12
Daily Boat/Canoe Rental	\$5-\$20	\$5-\$30
Daily Rec Building	\$50-\$100	\$50-\$150
Annual Horse Tags	\$15	\$15-\$30
Daily Horse Tag	N/A	\$2-\$5
Interpretive Fees	\$5-\$25	\$1-\$100
Golf Fees	\$65	\$25-\$90
Pet Fee	N/A	\$0-\$5
Late Departure	N/A	\$0-\$10
Special Event Permit	N/A	\$0-\$100
Bus - 1-15	N/A	\$20-\$40
Bus - 16& Up	N/A	\$40-\$60
Dump Fee	N/A	\$0-\$30
Non-gated Use Areas	N/A	\$0-\$10
Fishing Tournament App Cost	N/A	\$20-\$750
Fishing Tournament / Boat Cost	N/A	\$0-\$10
Fish and Wildlife		
Resident Hunting	\$14.25	\$17
Resident Fishing	\$14.25	\$17
Resident One-day Fishing	\$7	\$9
Resident Hunting & Fishing	\$20.75	\$25
Resident Annual Trapping	\$14	\$17
Resident Annual Turkey	\$23	\$25
Resident Youth	\$7	\$7
Non-Resident Hunting	\$60.75	\$80
Non-Resident Fishing	\$24.75	\$35

Non-Resident 7-Day Fishing	\$12.75	\$20
Non-Resident 5-Day Hunting	\$25.75	\$31
Non-Resident Annual Trapping	\$117.75	\$140
Non-Resident Annual Turkey	\$114.75	\$120
Res/Non-Res Trout/Salmon Stamp	\$9.25	\$11
Nature Preserves		
Enhanced Database Research	\$30 / half hour	\$42.40 / half hour
Inns		
Abe Martin Canyon	\$52-\$139	\$39-\$199
Clifty	\$49-\$109	\$35-\$159
Potawatomi	\$64-\$167	\$49-\$229
Spring Mill	\$47-\$174	\$39-\$259
Turkey Run	\$49-\$109	\$35-\$159
The Fort	\$49-\$190	\$39-\$259
	\$59-\$275	\$49-\$359
Docks		
Dock - Monroe 12 feet x 16 feet	\$500.00/yr	\$550.00/yr
Dock - Monroe 14 feet x 16 feet	\$530.00/yr	\$580.00/yr
Dock - Brookville Lake - Fairfield Marina 10 ft x 20 ft (w electric)	\$620.00/yr	\$695.00/yr
Dock - Brookville Lake- Fairfield Marina 12 ft x 40 ft (w electric)	\$1000.00/yr	\$1075.00/yr
Dock - Brookville Lake - Fairfield Marina 14 ft x 20 ft (w electric)	\$700.00/yr	\$775.00/yr
Dock - Brookville Lake - Hanna Creek Sailing 10 ft x 20 ft (w electric)	\$620.00/yr	\$695.00/yr
Dock - Brookville Lake - Hanna Creek Sailing 14 ft x 20 ft (w electric)	\$700.00/yr	\$775.00/yr
Dock - Brookville Lake - Hanna Creek Sailing 14 ft x 30 ft (w electric)	\$860.00/yr	\$935.00/yr
Dock - Hardy Lake 10 ft x 16 ft	\$460.00/yr	\$510.00/yr
Dock - Hardy Lake 10 ft x 20 ft	\$510.00/yr	\$560.00/yr
Dock - Hardy Lake 15 ft x 14 ft	\$425.00/yr	\$475.00/yr
Dock - Lieber SRA 14 ft x 22 ft	\$630.00/yr	\$680.00/yr
Dock - Lieber SRA 16 ft x 20 ft	\$460.00/yr	\$510.00/yr
Dock - Raccoon SRA 10 ft x 20 ft (w electric)	\$620.00/yr	\$695.00/yr
Dock - Raccoon SRA 10 ft x 20 ft	\$510.00/yr	\$560.00/yr
Dock - Raccoon SRA 14 ft x 20 ft	\$600.00/yr	\$650.00/yr
Monroe buoy	\$400.00/yr	\$450.00/yr
Brookville buoy	\$400.00/yr	\$450.00/yr

Poynter suggested the Department present to the Commission reports of revenue for the Commission to retain accountability. "I would ask that this be an agenda item included at each meeting." The Director agreed to provide reports at least four times annually, with the likely emphasis in meetings held during May, July and September. Vice Chair Cockrum concurred. By consensus, the members agreed to this approach.

Consideration of the Dedication of Hemlock Ridge Nature Preserve, Putnam County.

John Bacon, Director of the Division of Nature Preserves, presented this item. He said that the proposed nature preserve was located along Big Walnut Creek. He explained that the proposed nature preserve included a stand of rare Eastern hemlock trees, as well as some high forest communities. The Central Indiana Land Trust, Inc acquired the track. "In partnership with the Indiana Heritage Trust and the Nature Conservancy, and Central Indiana Land Trust, Inc. being the owner of the tract, we recommend that it be dedicated as a nature preserve."

Damian Schmelz reflected that Eastern hemlock stands are today rare in Indiana. He referenced one other somewhat similar site in southern Indiana. "These areas are worth seeing."

Schmelz moved to approve the dedication of the Hemlock Ridge Nature Preserve. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

Consideration of Amendments to Rule Section Governing the Emerald Ash Borer Quarantine to Add Areas in Adams, LaGrange and Randolph Counties (Administrative Cause No. 05-187E).

Robert Waltz, Ph.D., State Entomologist, presented this item. Waltz explained the proposed rule amendments would add two new counties to the quarantine area. He said the quarantine area would include Root and Washington Townships in Adams County, including City of Decatur, and the City of Winchester in White River Township in Randolph County. In LaGrange County, Lima and Newbury Townships would also be added to quarantine area

Damian Schmelz moved to approve for preliminary adoption rule amendments to 312 IAC 18-3-18 adding areas to the emerald ash borer quarantine area. McCormick seconded the motion. Upon a voice vote, the motion carried.

Consideration for Preliminary Adoption of Proposed Rule Amendments to 312 IAC 13 Governing Water Well Drillers (Administrative Cause Number 05-191W).

Mark Basch of the Division of Water presented this item. He said for consideration were proposed rule amendments to 312 IAC 13 that governs water well construction standards. The proposed amendments would eliminate minimum casing diameter requirements for monitoring well installation; allow thermal grouts to be used in geothermal well installation; and prohibit the use of lumber pressure treated with chromium copper arsenic salt (CCA lumber) in the lawful abandonment of bucket and hand dug wells.

Basch said when the rules were adopted in 1988, existing technology did not allow for small diameter monitoring wells to be sampled. “The two-inch diameter requirement that was in place at that time was supported by the industry because it was really necessary in order to sample those wells.” With the new technology, particularly with regard to what is termed “direct push installation”, smaller diameter wells can be installed that can accommodate sampling. He acknowledged, “There has always been somewhat of a concern, particularly with regard to Indiana Department of Environmental Management, as to the integrity of those wells long-term of that type of installation.” Basch noted, however, that recent studies indicate the wells “do seem to be applicable.” He said IDEM may be drafting rules “down the road” to address its concerns. “The Department feels like the installation of those wells is something that can be done and those wells can be sealed properly; therefore, the smaller diameter requirements would allow for this new direct push installation.”

Basch explained the thermal grouts that are proposed are used in a closed-loop geothermal well system installation. “You use these thermal grouts in order to transfer heat from the fluid that they use as it’s circulating through the actual heat exchanger. The grout materials require sand to be used that really hasn’t been allowed under our current rules.”

Basch explained that 312 IAC 13-10-2 requires a well abandoned before January 1, 1998 to be capped, and the homeowner can do the capping. “At the time, the treated lumber was a method that was typically used to kind of put a lid on it and they would shingle it.” With the bucket wells, or the larger diameter dug wells, the concern was “more for liability of having those open rather than a concern for water quality issues. Because that particular method of treatment is no longer offered for residential use, we felt that it was appropriate to go ahead and eliminate that type of treatment for the coverings of bucket wells.” Basch requested that the Commission give preliminary adoption to the proposed rule amendments.

Patrick Bennett with the Indiana Manufacturers Association (IMA) addressed the Commission. “I’m here today to encourage your support of the preliminary adoption of the rule changes. The Manufacturers Association supports this change and has communicated with our membership in the last few months and the last couple years about the need to do this.” He indicated IMA’s primary concern is that there can be a “sizeable cost savings and also a considerable amount of time saved in using this new technology.” Bennett noted that other states have approved the new technology—Oregon, South Carolina, Maine, Florida, and significant use by the military, on installations where they are using monitoring wells. “The cost that can be saved is really primarily derived from the waste and the disposal of the auguring and the soil.” He added that using the direct push method “decreases the amount of cuttings that come up through the soil.” Bennett concluded, “We appreciate your consideration of this and would hope that you would take it on preliminary adoption.”

Jane Ann Stautz moved to approve for preliminary adoption of rule amendments to 312 IAC 13 governing water well drillers. Matthew Klein seconded the motion. Upon a voice vote, the motion carried.

Consideration of Preliminary Adoption of a New Rule (312 IAC 10.5) to Assist with the Implementation of IC 14-27-7.5 that Governs the Regulation of Dams (Administrative Cause No. 05-195W).

Ken Smith, Assistant Director of the Division of Water, presented this item. He said Indiana has had legislation since the early 1960s regarding dam and levees. In 2002, the Legislature made changes “actually separating levees and dams into two particular pieces.” Smith said before the Commission is a request for preliminary adoption of rules dealing with IC 14-27-7.5. “Particularly, there are definitions and procedures relating to how dams are classified, whether they be a high-hazard dam, a significant-hazard dam, or a low-hazard dam.”

Damian Schmelz moved to approve the preliminary adoption of the rule governing the regulation of dams. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

Renewal of Contract for Low Flow Augmentation From Monroe Lake for Indianapolis Power & Light Company (Contract No. MWS-05-1).

James Hebenstreit, Assistant Director of the Division of Water, presented this item. He said the Division of Water was requesting renewal of the contract with Indianapolis Power and Light for the reservation of 1,000 acre-feet of storage in Monroe Reservoir for release of low-flow augmentation at the Petersburg Generating Station in Pike County. The original contract with IPL was signed in 1980 covering a period of 25 years. “That contract is close to expiration. Indianapolis Power and Light would like to extend or enter into a new contract for an additional 20 years.” Hebenstreit indicated that the Department recommended approval of the contract.

Vice Chair Cockrum reflected, “I read this carefully, and I am intrigued to find that the amount of water you are talking about in drought conditions would only lower the reservoir one to 1 ½ inches.” Hebenstreit responded, “In reality, Indianapolis Power and Light has never had to ask us to release water. In 1998, they thought about it, but due to temperature conditions the thermal conditions would have been too high so the release would not have done them any good.” He added, however, Indianapolis Power and Light did want to continue the contract.

McCormick said the Division of Water was a regulatory division, but the Division of Fish and Wildlife or the Division of State Parks and Reservoirs would be the ones impacted by the lowering of the water. “How did they come to decide to go to the Division of Water rather than the land holding divisions?” Hebenstreit responded that the original statute “spells out the fund, and [the Division of Water] administers the contracts. The money goes into that dedicated fund.”

Bryan Poynter moved to approve the renewal of the contract for low flow augmentation from Monroe Lake for Indianapolis Power and Light Company. Matthew Klein seconded the motion. Upon a voice vote, the motion carried.

Consideration of the Recommended Report of the Natural Resources Commission with Respect to the “Petition for Establishment of the Millpond Conservancy District” (Administrative Cause Number 05-116C; Steuben Circuit Court Cause Number 76C01-0501-MI-0035).

Steve Lucas gave an overview of the creation of conservancy districts and the Commission role. “In considering the petition to form a conservancy district, the Commission serves, in effect, as a technical advisor to the local circuit court. The local circuit court makes all of the decisions relative to the formation of the district.” He explained that there are “technical issues” upon which the Commission is to provide advice to the court, and “those become prima facie evidence” in any subsequent proceeding that the court would hold.

Lucas noted standards for conservancy districts vary “a little bit” depending upon the nature of the purposes for which the district is proposed. A district can be formed for multiple purposes, and for each purpose there must be a separate evaluation. “In general terms, the first issue is whether the proposed district appears to be necessary. The second is whether the district shows promise of economic and engineering feasibility.” At the petition stage, there is not an irrevocable decision as to how the economics and engineering would be performed. If a district were established by the circuit court, that decision would be made later when the district board develops a district plan. Rather, at the petitioning stage, the question is whether a district appears to be doable. The third item is whether the district offers benefits in excess of cost and damages. Fourthly, the Commission analyzes whether the district proposes to serve and cover a proper area. Each part of the district needs to be contiguous to another part “so you don’t have isolated pieces of real estate for a single conservancy district.” Lucas said the final standard is whether the district can be operated and managed in a manner that is compatible with other water management districts. “That can be particularly broad. You can be talking about a drainage board, the Great Lakes Basin, or a wastewater district.” He said, “These are the five basic principles that apply to most districts. It’s adjusted a little bit if you are talking about wastewater treatment or water supply, as opposed to other purposes.”

Vice Chair Cockrum explained that the Commission’s packet contains a summary of public hearing, public comments, and recommendations from the Hearing Officer. He then called for citizen comments pertaining to the proposed Millpond Conservancy District.

Bob Howard, Town Manager for the Town of Hamilton, addressed the Commission. He indicated that the Town of Hamilton “would be lost without [Hamilton Lake], and we have spent hundreds of hours trying to come up with the way to raise our funds for the local match to do the necessary repairs [to the dams]. This is the way that we have determined it reaches the proper people, and this is what we would like to do.”

Vice Chair Cockrum recollected that the local funding match for the dam repairs was 10%, and the General Assembly would provide 90% of the funding. Howard affirmed the Town of Hamilton’s match of 10%, and the State has 90% “between DNR and INDOT.”

Dan Brinkerhoff, Petitioner’s attorney, addressed the Commission. He said the Petition for Creation of Millpond Conservancy District was filed with the Steuben Circuit Court in early 2005. The petition was in response to a flooding event that took place in Hamilton in May of 1996 following a 10-inch rainfall event within a 24-hour period. “Hamilton Lake overflowed and the spillway overtopped, and the dam sitting just downstream of the spillway overtopped. State Road 1/427, which sits immediately downstream of the dam and spillway, actually acted as a backup dam.”

Brinkerhoff said that the State of Indiana, as a result of the flood event, performed some repairs to the dam and roadway, and then “presented the Town with the options as they saw them. Those options were to lower the lake level about seven or eight feet, which would reduce the surface area of the lake by about 50%, or the community could participate in the repair of the dam and the spillway. The Town opted for the second choice.” Brinkerhoff said that through negotiations with the State, the State is agreeing to pay 90% of the construction costs of the dam, spillway, the roadway and bridge underneath it “provided the Town comes up with a 10% match not to exceed \$500,000 of construction costs.” After “many” meetings, it was determined that the best way to raise the local match was to petition the Steuben Circuit Court to form the conservancy district.

Brinkerhoff said that the recommendations in the report “shows that all the technical points have been answered in the affirmative. It’s our position that this is the best way for the community to raise the funds to preserve the lake, to preserve the value of the homes, and the properties surrounding the lake.”

Ralph Holman, Steuben County President of Indiana Farm Bureau, addressed the Commission. He said that he and his brother own approximately 700 acres with 400 acres within the watershed of Hamilton Lake. “First of all, I would like to say that this is a state problem. The liability and maintenance has always been Indiana. The agency to decide what needs to be done to the dam, should be done by state engineers, and not by somebody that’s hired an outside group saying we need a dam.” Holman said that he witnessed the 1996 flood. “When a lot of rain falls, it’s tremendous. It scared everybody. It scared INDOT.” The dams are “getting up in age, but it’s still the state’s problem 100%.” He said that 26 people spoke at the public hearing in Angola, and “20 plus was against forming another conservancy district, including a county commissioner.” He said that the Steuben Circuit Court would “likely” defer to the Commission recommendations. “This Commission carries a lot of weight with the Court.”

Holman said the formation of the conservancy district would create “a lot of pressure on the landowners. If this district is formed, then you’re sending a message to other lakes up there that they can form conservancy districts to create a taxing unit, which would create an income for them, if they decide to do something. I think the Town of Hamilton was intimidated that if they did not build a dam, the state would lower the lake.” He said the conservancy district would raise taxes for farmers and land owners from “miles away” to pay not only for the dam, but for trees, shrubs, parks, wildlife areas, chemicals to treat the pond, and even landscaping, “which has no value to anybody upstream. It does to people on Hamilton Lake.” Holman said that the farmers could not pass on the added costs associated with the conservancy district. “The farmers and landowners already pay ditch taxes. My answer would be not to do any of this. It would be to create retention ponds to hold water upstream.”

McCormick said that as a fellow farmer he “sympathized” with the tax burden incurred and the additional burden. “It seems to me that you’re questioning the necessity of doing this. However, when I have read through the information, upon inspection by the DNR, they assess the dam as a high risk, and high risk means that the failure of this dam would result in the loss of human lives.” Holman noted that one death was associated with the 1996 flood. “A lady tried to cross a flooded road, and she and her car were swept away, and because of that she drowned. That is the only reason they made the dam a high risk.”

McCormick added, "I thought in high-risk that there were homeowners downstream that would be imperiled if the dam would break." Holman replied, "Oh, if that dam would break, sure there would be. I'm not questioning that at all." McCormick indicated that he applauded Holman's "proactive ideas doing things upstream."

Dale Gick, with the DNR's Division of Engineering, clarified a high-hazard dams designation. He explained that the designation of a high-hazard dam is not based on events that have occurred. Instead, the designation is based on the potential harm resulting from a failure. He noted that the Hamilton Lake dam has been rated as a high-hazard structure previous to the 1996 event.

Wayne Crowl addressed the Commission. He said he owns 332 acres in the proposed conservancy district. "I pay drainage taxes on my ground so my water won't back up and it will flow freely. I see no reason to pay for a dam that does not benefit me. From day one," the Town of Hamilton agreed to pay the 10% of the construction cost. When the Town of Hamilton could not raise the funds, it sought to form the conservancy district, consisting of approximately 9,681 acres, which is the sum total of the watershed. The acreage consists of farmland, forest, and wetlands, except for 1,360 acres, which are partially Hamilton Lake and the Town of Hamilton.

Crowl said the conservancy district would only benefit lakefront owners and the Town of Hamilton. "I might add that there are a lot of people that are lakefront owners that are opposed to this proposed district, too." He said that since the state owns, controls and maintains the dam, he could see no reason for the local match that would put the ownership and liability on local communities. "Because the town wants to form this district, openly it will have the power to condemn my farmland and take away my heritage so they can have their parks and recreational facilities." He pointed out that the findings and recommendations of the hearing officer concluded "unfavorable" recommendation with respect to parks and recreational facilities. He expressed concern that, if the conservancy district were formed, the board would have the power to convert his land into parks and recreational facilities. "It would be a prime location if they decided to do it." He added that the local Commissioners opposed the establishment of the conservancy district.

Crowl said he felt the state should "fix the problem" and should continue to own and maintain the dam, rather than the Town of Hamilton. "I would hope you would give this an unfavorable recommendation on this proposal."

Tom Poynter, Hamilton Lake property owner, addressed the Commission. "This is a good project and this project needs to go forward. I think it offers good benefits for the town. And, I've been involved in town government long enough, that I know efforts these people have put forth to find ways to fund this project, and this was the most feasible way to fund the project. The bottom line is we the taxpayers supply the state with money to do all the things that need to be done."

Poynter noted that one big objection with the project is the watershed, and "farmers don't like their property being taxed." He said taxes were a give and share proposition, and everyone pays taxes and "get certain things back." He said that farmers get subsidies that come from the taxpayers. "I'm not complaining. I live on the lake, I have nothing to do with farming, but I

help pay for that expense through the state. And, I just think it should be a cooperative effort, and I think this project needs to go forward. I hope you give it a strong recommendation.”

Mark Thornburg, Director of Legal Affairs with Indiana Farm Bureau, addressed the Commission. He told the Commission that he was “relatively new” to the conservancy district process and that he was trying to understand how it “takes place, and how it works. Farm Bureau has a concern anytime a municipality can jump out into the countryside and create a special taxing unit, and we need to understand that process better.”

Thornburg said that “districts are created to elect directors, and I believe that’s done by the Court locally to create a district’s board to represent the conservancy district. However, Indiana Code 14-33-5-1 states the majority of directors must come from petitioners. And, so to me that’s a foregone conclusion then the town would have the majority control over the district. And, are the districts established based on population, acreage or number of parcels based on the allocation of the district. So, again I’m not sure how that is done. So again, perhaps Hamilton Lake Conservancy District could have added to its district for the purpose of its current purpose. So, again, thank you for the opportunity to comment and I look forward to understand the process better and work with you.”

Director Kyle Hupfer referenced the options for addressing problems with the dams. He said, “My understanding was that there were basically two options given. One was for the state to bear the entire burden, and what we would do is lower the lake basically to deal with it, is that correct?”

Bob Howard responded, “That was an option that was given, that we did not accept, instead of the rehabilitation of the spillway and dam. We were told that the less dangerous option would be to lower the lake to do away with and cause the removal of the spillway.”

Hupfer reflected, “The Town of Hamilton and the property owners around the lake are going to see a significant increase, or at least not a decrease in their property value, by maintaining that lake level as it currently is and by replacing the dam.” He asked why the conservancy district was not dealing just with property owners who would possibly have their property values affected by the dam rebuilding.

Howard responded, “We were advised to include the entire watershed because all the water contributed to the problem with the spillway. Hupfer asked, “Advised by whom?” Howard replied, “Members of the DNR.”

Director Hupfer asked Brinkerhoff, “What is the effect on 100 acres? It looks like it’s \$15 per thousand acres of non-lakefront property?” Brinkerhoff responded that, according to the financial information provided by the financial consultants, a home with an assessed evaluation of \$100,000 on the lake would pay approximately \$60 per year or \$5 per month through the taxation. He added that the same home valued \$100,000 without access to the lake would pay \$1.23 a month. “So we proposed to allocate 65% of the cost of funding in the budget each year toward properties that have access to the lake. The properties without lake access would pay 35% of the cost. A typical farm of 250 acres with an assessed evaluation of \$262,000 is proposed to pay \$38.68 per year or \$3.22 per month.

Director Hupfer observed that a concern from the opponents was that the scope of the conservancy district is greater than just the dam. He asked Brinkerhoff if there was a willingness to narrow the scope to where the sole purpose of the conservancy would be the match for repairs on the dam. "Wouldn't that help allay those ongoing fears of the farmers and other citizens who aren't in the Town of Hamilton?"

Brinkerhoff replied, "We've addressed this at every meeting that we've had on this project, including the hearing in front of the Steuben Circuit Court, and the hearing on August 17th in Angola. The petition that was filed included those additional purposes, first because the statute seems to indicate that you should. And, secondly, at least in the beginning stages of this project, the town and committee working on this believed there was the support from the Lake Association to do some water quality projects for the lake that they can't get done now through their own Association. So there was perceived from us some support from the lake association to do the water quality projects for the lake. The officers of the association have changed, and I'm not so sure now that we still have that support. The only plan that the initial board, once its appointed by the county commissioners, intends to submit, or we intend to suggest, is a plan to raise the local match. There will be no other water quality projects, no parks, no recreation projects included in the plan, which as you know has to be approved by the circuit court." The freeholders would elect the board members. He said if the freeholders were to say, "we want no more projects" but just pay the local match and raise enough money annual to maintain the new dam, that is all the new Board would be authorized to do.

Hupfer asked Brinkerhoff for further clarification. He asked if there was a willingness by the Town of Hamilton to narrow its petition solely to cover rehabilitation and maintenance of the dams. "Because it sounds like it won't necessarily be those folks out in the watershed that have enough representation on the board to limit what future use is. This may be their only opportunity to limit what this board decides to do. For instance, water quality doesn't seem to be an issue that they should be concerned with."

The Vice Chair asked Steve Lucas to provide clarification concerning the process as it pertains specifically to the proposed Millpond Conservancy District. Lucas responded, "There were two proposed purposes for this district. One purpose would be to develop forest and wildlife areas and recreational facilities where it's feasible in connection with beneficial water management. The second purpose would be basically to operate, rehabilitate and maintain the dam. The Steuben Circuit Court can do as it determines appropriate based on such further evidence that might be received at its subsequent hearing. The hearing officer recommendation to the Commission is, however, negative as to the first proposed purpose. There are a couple parts of the recommendation that are negative that says there weren't facts sufficient to support formation for the development of forest and wildlife area and recreational facilities. But most particularly, as it is before the Commission right now, is that there is a proposed finding there is no need for that first purpose. So, unless the court determined that this finding is in error, this district would not be formed for the first purpose. It would only be formed for the purpose of dam maintenance and rehabilitation."

Director Hupfer asked, "So our recommendation, as you drafted it to approve, is the Commission supports the formation of the district for the purposes of raising the match for dam rehabilitation, and we do not support the formation for any other purposes?"

Lucas responded, “That’s basically true. The way the Conservancy District Act is written is a little bit unusual in that it never asks that the Commission make a recommendation on the ultimate question of whether to form a district. It has the five factors within each proposed purpose. And, to be affirmative for the formation of a district for a particular purpose, each of those five factors has to be in the affirmative. It’s probably implicit to the disposition of those five factors, but the Conservancy District Act doesn’t authorize the Commission to make a recommendation on the formation of the district.”

Vice Chair Cockrum followed up. “So, clarify in my mind, if this were approved, our recommendation to the court is it’s approved for the dam only, and we had negative findings for the other purposes. Because I think there was some legitimate points raised today about the future of the district and what it does. And people paying 35% of it have a minority say-so in what the district may do eight years from now.”

Lucas replied, “Yes. If this were to go forward as proposed to the Commission, there would be five positive findings as to the dam rehabilitation and maintenance. There would be two, three or four negative findings as to the other purpose [to develop forest and wildlife areas and recreational facilities] so it would not go forward there, unless the court chose to do otherwise.”

Bryan Poynter asked, “Ultimately, isn’t that when the district is actually elected that it becomes a local issue? If the board that’s elected to oversee the district is an elected body, that they decide on a local level that that’s what they want to do, then it becomes local jurisdiction?”

Lucas replied, “A board is limited to the purpose or purposes for which it’s approved.” The board could later ask the Steuben Circuit Court to add another purpose, but doing so would cause another review process to be initiated as to the additional purpose. If the board were established for the purpose of dam rehabilitation and maintenance, it could not legally perform another purpose. Without court approval, “They do not have a prerogative to say, well, we want to do these other things, too.”

Vice Chair Cockrum asked, “If the Conservancy District five years from now wanted to create a safety patrol on the lake, it would not be part of its charter?” Lucas answered, “Right.”

Director Hupfer asked, “So if the Court adopts our recommendation, their scope will be limited?” Lucas answered, “Correct.”

Mangus asked Dan Brinkerhoff, “Where do you pursue the directors to come from for the board?” Brinkerhoff answered, “Under the statute, they are first appointed by the county commissioners.” He said, in the past, the county commissioners would tell the petitioners to provide five names, “and we will find five people who are willing to serve on that board who support the purposes as determined by the court, and we will submit those names to the county commissioners.”

Mangus asked, “So you’re saying that the people will come from outside the Town of Hamilton?” Brinkerhoff replied, “Yes, they will come from the district which is 90% outside of the Town of Hamilton. And, just to answer your question better, we are satisfied with the recommendations contained in the report. And, we don’t intend to present any evidence to the

Steuben Circuit Court on any purpose other than raising the local match of \$500,000 dollars. We didn't do it before, we're not going to do it next."

Vice Chair Cockrum said, "And, so the hand we're dealt is the legislature has appropriated 90% to rehabilitate the dam, which is considered a high-risk dam." As written, the hearing officer report would support formation of the district to provide rehabilitation and maintenance of the dam, but it would not support formation to develop forest and wildlife areas and recreational facilities.

Bryan Poynter recused himself from participation in action on the hearing officer report.

McCormick asked whether the allocated funds for dam rehabilitation would be unavailable in the future, if the conservancy district was not formed.

Kenneth Smith, Assistant Director of the Division of Water, answered that if the conservancy district was not formed, the state monies could still be available. The money would not automatically go away. Smith added that, in his past experiences dealing with project funding, the first question the State Budget Committee would ask was what the local participation was. "Local participation in these projects, when you have so many stakeholders, it's just expected by the legislators."

Vice Chair Cockrum asked Smith, "But, you're very clear it's the legislative intent there be a local match?" Smith replied, "It's always done. Especially on this, yes."

Jane Ann Stautz moved to approve the Hearing Officer's Report with respect to the "Petition for the Creation of the Millpond Conservancy District" as the Commission's report and recommendation to the Steuben Circuit Court. Damian Schmelz seconded the motion. Raymond McCormick and Richard Mangus were opposed. Upon a voice vote, the motion carried.

Consideration of the Recommended Report of the Natural Resources Commission with Respect to the "Petition for Establishment of the North Lake Conservancy District" (Administrative Cause Number 03-133C; Johnson Circuit Court Cause Number 41D01-0410-MI-43).

Jennifer Kane, Hearing Officer, presented this item. She said the Petition for Establishment of the North Lake Conservancy District was initially referred to the Commission in an Order from the Johnson Circuit Court on July 18, 2005. She also indicated that letters requesting comment were sent to state agencies and other governmental entities.

Kane explained that IC 14-33-2-17 sets forth requirements regarding the Commission's determination and report. For the proposed North Lake Conservancy District, the Johnson Circuit Court referred the Petition to this Commission to make a determination and report whether the proposed District met the five statutory factors. Kane said the proposed district is located in the Prince's Lakes area, and the district would encompass North Lake and lots surrounding North Lake.

Kane noted that engineers from Commonwealth, Regional Services Corporation, and DNR inspected the dam and spillway of North Lake. “The stability of the dam is questionable, and the spillway is in a deteriorated condition. North Lake dam is ‘conditionally poor’ and characterized as a high hazard dam—a rating assigned to a structure based on the potential consequences resulting from the uncontrolled release of its contents due to failure or misoperation of the structure, and the failure of which may cause loss of life and serious damage to homes, industrial and commercial buildings, public utilities, major highways, or railroads.”

Kane said the North Lake community is pursuing the formation of a conservancy district mechanism to preempt further degradation of the dam, which would eventually lead to dam failure, if maintenance is ignored. Kane said the proposed purposes of the proposed district are as follows:

- (1) Providing flood prevention and control;
- (2) Developing forests, wildlife areas, parks and recreational facilities in connection with beneficial water management; and
- (3) Operation, maintenance, and improvement of works of improvement including, but not limited to. North Lake and North Lake dam and spillway.

Kane said that technical assistance was requested from the DNR, Division of Water, regarding the purpose of providing flood prevention and control. She also noted that the Commission’s Procedural Guidelines for the Interpretations of the Conservancy District Article (IC 14-33), Information Bulletin #36 (3rd Amendment) provides review standards for this purpose.

Kane said North Lake and its dam were constructed in the 1950s in a valley tributary to Mud Creek, and the dam is not a permitted structure. “The Department indicates that the safety modifications to the North Lake Dam as recommended by Commonwealth Engineers and Regional Services Corporation will reduce the risk of a dam failure. However, the modifications will not reduce downstream risk to a degree lower than existed prior to the construction of the dam. To be a flood control structure, a dam should be designed to perpetually—or be relied on forever—to reduce the release of floodwaters during rainfall events.” She said the DNR recognized the associated dams of Huntington Reservoir, Salamonie Reservoir, Mississinewa Reservoir, Eagle Creek Reservoir, Cecil Harden Lake, Brookville Reservoir, Monroe Reservoir, and Patoka Lake as flood control structures. “The existing North Lake dam and spillway are not recognized as providing flood control benefits.” Kane said that evidence was not presented to indicate the improvements to the dam and spillway would provide the recognized elements of flood prevention and control. “The proposed North Lake Conservancy District, for the purpose of providing flood prevention and control, is not necessary. With only 103 freeholds, the cost to design, construct, and maintain a recognized flood control structure would be onerous, and costs would be in excess of the benefits to those within the proposed district.”

Kane said North Lake was created as a recreational impoundment and is one of a system of lakes within the Prince’s Lakes area. The responsibilities of the North Lake Lot Owners Association would be shifted to the proposed North Lake Conservancy District, including dam improvement, maintenance, and aquatic weed control. “The proposed district appears to be necessary, because the costs and expertise required to properly manage and maintain the North Lake dam are not

found in the North Lake Lot Owners Association.” Kane said all property within the proposed district is contiguous. The district, as proposed for the purpose of developing recreational facilities in connection with beneficial water management, would cover and serve a proper area, and it would be compatible with the existing conservancy districts in the area.

Kane said, “The proposed district is necessary to provide long-term maintenance of, and an emergency action plan for, the North Lake dam.” The conservancy district as a mechanism for the operation, maintenance, and improvement of lakes and dams is a proven methodology and holds promise of economic and engineering feasibility. Kane said the report before the Commission follows the statutory requirements under IC 14-33-2-17, and recommended approval as the Commission’s report to the Johnson Circuit Court.

Director Hupfer asked Kane to summarize the report’s recommendations. Kane said a “negative” recommendation was made regarding the purpose of providing flood prevention and control. “This purpose is not recommended.” Kane said, however, the remaining purposes appear appropriate with positive recommendations. Hupfer reflected that the proposed district area was “more limited in comparison to some of these we’ve received”, and he asked whether there was opposition to the proposed district. Kane said there was no opposition to the establishment of the North Lake Conservancy District. She added, “Every North Lake lot owner was given notice of the petition, as well as notice of the public hearing.” Kane indicated that the Petitioner’s attorney, Alan Hux, was also present.

Alan Hux requested the Commission to “give approval of the recommended report.” Roger Kottlowski from Commonwealth Engineers indicated that he “concurred” with Mr. Hux’s request.

Richard Mangus moved to approve the Hearing Officer’s Report with respect to the “Petition for the Creation of the North Lake Conservancy District” as the Commission’s report and recommendation to the Johnson Circuit Court. Bryan Poynter seconded the motion. Upon a voice vote, the motion carried.

Consideration of the Recommended Report of the Natural Resources Commission with Respect to the “Petition for Establishment of the Union Township Lake Conservancy District” (Administrative Cause Number 03-151C; Porter Circuit Court Cause Number 64C01-0506-MI-5160).

Jennifer Kane also presented this item. She said the Porter Circuit Court referred the Petition for Establishment of the Union Township Conservancy on August 18, 2005. She noted that letters were circulated requesting comment from other state agencies and governmental entities. The proposed district is located in Union Township, western Porter County, and would encompass an 80-lot residential development known as “Avalon Hills”.

Kane said the purposes of the proposed district would be to provide for the collection, treatment, and disposal of sewage and other liquid wastes; to improve drainage; and to develop forests, wildlife areas, parks and recreational facilities in connection with beneficial water management. She said the proposed district would provide wastewater collection and treatment service to Avalon Hills. “The proposed district boundary encompasses an area currently zoned for

agriculture, and it is not currently served by a sewer utility. The nearest sanitary sewer service, the Merrillville Conservancy District, is 3.5 miles away on US 30.” Kane said the soils in the proposed district were not suited for conventional septic systems, and she explained that a “constructed wetland mound system” is proposed to meet the sanitary sewage service needs. She provided the Commission members with a schematic of the constructed wetland mound system.

Kane explained that the wetland system uses four constructed wetland mound areas that would each have sewage treatment capacity for 20 homes. “Constructed wetlands are a good alternative to conventional on-site wastewater disposal systems.” She said the operation and maintenance of this system “may not be readily found in a homeowners association. The proposed conservancy district would be able to contract with certified resources for this expertise, and the district appears to be necessary.” Kane said connecting to an existing sewage utility would not be cost effective due to the distances from the proposed conservancy district. “The proposed user fee of \$35.50 is comparable to other utility rates in Indiana”, and the district holds promise of economic and engineering feasibility.

Kane noted that the wetland mound system requires a septic tank for each lot, and the septic tanks would be pumped on a regular schedule of three to five years. She indicated that the wastewater would be trucked to an appropriate treatment site, but the location of the treatment site was not specified in evidence offered by the petitioner. Kane said the proposed district lies wholly within the Great Lakes Basin but is near the boundary with the Illinois River Basin. “If wastewater were trucked outside the Great Lakes Basin, the conservancy district would be required to comply with federal and state laws pertaining to inter-basin transfers.” Kane recommended that the proposed Union Township Conservancy District “must either clarify that it will not truck wastewater outside the Great Lakes Basin, or it must address the requirements of IC 14-25-1-11 and 42 U.S.C. 1962d-20.”

Kane said the proposed conservancy district appears necessary for the purpose of improving drainage. She explained that the planned storm drainage facility would consist of curb inlets, manholes, ditches, culverts, and pipes to convey runoff to the existing storm sewer, with three interconnected retention ponds. “Testimony indicated that maintenance of the retention ponds would be borne by a homeowners association. The conservancy district would not be responsible for maintenance, and a legal mechanism is not apparent by which the conservancy district could assure that the requisite maintenance would be performed by the homeowners association.” She added, “Unless the conservancy district either takes direct responsibility for maintenance, or has clear authority to require maintenance by the homeowners association, this aspect of the proposal may lack engineering feasibility.”

Kane noted that the constructed wetlands treatment system would be fenced to prevent unauthorized entry of persons and larger wildlife, but it would attract various birds and other smaller wildlife. She said the planned common areas, constructed wetlands, trail, and retention ponds would be within the proposed district boundaries. “Opportunities for passive recreation will be available and maintained for enjoyment of the residents.” She said the purposes of the proposed Union Township Conservancy District appeared supportable, and she believed the report followed the statutory requirements under IC 14-33-2-17.

Kane summarized that all purposes of the proposed district appeared appropriate with an “overall” positive recommendation. She recommended that the hearing officer report be adopted

as the Commission's report to the Porter Circuit Court. Kane also indicated that the petitioner's attorney, Alex Intermill, was present. Hupfer asked whether an IDEM permit was required for the proposed wetland mounds treatment system. Kane said that the formation of a conservancy district did not eliminate responsibility for compliance with licensure requirements. She said she was not aware whether the petitioners have made application to IDEM for a sewage treatment permit.

Alex Intermill spoke for the petitioner. He clarified the two concerns listed in the recommended report. Regarding the possible Great Lakes water diversion, Intermill explained that in discussions with Chris Badger, engineer for the development project, "the waste that will be pumped from the septic tanks in front of each lot [and taken] to a location in Lake County. There will be no diversion of water outside the Great Lakes Basin." Intermill addressed the Hearing Officer's concern regarding maintenance of the retention ponds. "I spoke with [the Petitioner] Mr. Lahaie, and he indicated that if the Porter Circuit Court deems it necessary based on the concern of the Commission, that the [Union Township Conservancy] District would take control of the retention ponds as well."

Richard Mangus referred to the schematic of the wetlands mounds treatment system. He asked whether the effluent "goes to the septic tank, to wetlands, to mounds?" Intermill responded that his understanding was correct. "The septic tank will remove the solids, and then the wetland removes the chemical concern of nitrogen. It basically acts as a filter so that when the effluent from the wetland goes into the mound, it is not hazardous."

Mangus asked, "Why do you need the mounds?" Intermill explained that the mounds are the "final stage in the process..., if the water is not evaporating out of the wetlands." He added that in the summer months there might be "zero discharge to the mounds because of evaporation out of the wetlands. However, in the winter, the colder times of the year, water is not going to be traveling as quickly across the wetland and not going to be evaporating much. You need a mound for the effluent to go after it has been properly treated."

Mangus asked whether the State permits these wetland systems without mounds. Intermill responded that he was "not sure. We look to our engineer in designing" the system.

Matthew Klein, Commission member and representative of IDEM, explained. "A mounds system is appropriate technology where the soil is of concern." Mangus asked, "Why not just wetlands?" Klein continued, "Some soils are poorly drained. I noticed in the report it talks about Pewamo silty clay loam, which would, if you just had a septic tank and a pipe going out to the subsurface, that might not be appropriate because the fluids in clay soil might run off or get backed up. That's why you will also see a mounds system required." Mangus reflected that he remained unconvinced the mounds were necessary.

Bryan Poynter moved to approve the Hearing Officer's Report with respect to the "Petition for the Creation of the Union Township Conservancy District" as the Commission's report and recommendation to the Porter Circuit Court. Raymond McCormick seconded the motion. Upon a voice vote, the motion carried.

Consideration of Report of Hearing Officer Recommendation for Final Adoption of Repeal of 312 IAC 17-3, Geophysical Surveying Requirements (Administrative Cause Number 05-080G; LSA Document #05-99(F))

Stephen Lucas, Hearing Officer, presented this item. He said the proposal was “really a housekeeping measure.” He explained that the Indiana General Assembly repealed the legislation that authorized the regulation of geophysical surveying activities during the most recent session. With repeal of the statute upon which the rule is authorized, “The rule adopted under that statute also needs to be repealed.”

Jane Ann Stautz moved for final adoption of repeal of 312 IAC 17-3 governing geophysical surveying requirements. Bryan Poynter seconded the motion. Upon a voice vote, the motion carried.

Consideration of Amendments to a Nonrule Policy Document for “Mediation and Facilitation in Administrative Proceedings before the Natural Resources Commission and the Department of Natural Resources” (Information Bulletin #13) and Request to Endorse Continued Participation in the Shared Neutrals Program; Administrative Cause No. 05-185A

Steve Lucas also presented this item. “This item is a continuance of a process really where the Natural Resources Commission was the pioneer state agency to opt into the use of mediation under the Administrative Orders and Procedures Act.” He noted that the process has “matured”, and other agencies are participating with the Commission in what has been termed the “Shared Neutrals Program”. Lucas explained the item was presented to ask the Commission to endorse continued participation in the Shared Neutrals Program and to “continue to have your blessing to function with the other agencies in the mediation process.” He added, “In this go around, I cannot claim that the Commission would be the first signatory, however. IDEM beat us to the punch on this one, but we would be one of the first.”

Rick Cockrum gave “kudos” to Lucas for “pioneering the concept even if IDEM beat you to the punch.” He added, “It’s a great program for the taxpayers and the parties to try to mediate a conflict” rather than to hold hearings.

Damien Schmelz moved for approval of amendments to the nonrule policy document for “Mediation and Facilitation in Administrative Proceedings before the Natural Resources Commission and the Department of Natural Resources” (Information Bulletin #13), as well as to endorse continued participation by the Division of Hearings in the Shared Neutrals Program. Bryan Poynter seconded the motion. Upon a voice vote, the motion carried.

Adjournment and Next Meeting

The meeting adjourned at approximately 12:30 p.m. The next meeting is scheduled for January 18, 2006, 10:00 a.m., EST, at The Garrison, Fort Harrison State Park, 6002 North Post Road, Indianapolis (Lawrence), Indiana.